(1)

91-18

No. 91-____

Supreme Court, U.S.
FILED
JUL 2 1991
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1990

ELIZABETH SHARPE, CYNTHIA SHARPE, LENROY SHARPE, ALBERT SHARPE, DAVID BECKFORD and LEROY BLAKE,

Petitioners,

vs.

PHILIP A. ROTH, APPLE VALLEY FARMS, INC. and P.A.R. ORCHARDS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Dated: July 2, 1991

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62

QUESTIONS PRESENTED

1. Whether the district court's 67% reduction of plaintiffs' lodestar fee to make it proportional to plaintiffs' damages is consistent with this Court's precedents?

2. Whether the district court's further 35% reduction of plaintiffs' fee, again based on the amount of plaintiffs' damages as well as such factors as the "simplicity" of the issues presented and the lack of a class action is consistent with this Court's precedents?

3. Whether the district court's determination of counsel's hourly rates without considering the prevailing market rates in the community is consistent with this Court's precedents?

LIST OF PARTIES

Plaintiffs in the proceedings below were Elizabeth Sharpe, Cynthia Sharpe, Lenroy Sharpe, Albert Sharpe, David Beckford and Leroy Blake, petitioners herein, and Allen Campbell and Mable Wright. Defendants in the proceedings below were Philip A. Roth, Apple Valley Farms, Inc. and P.A.R. Orchards, respondents herein.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LIST OF PARTIES ii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

STATEMENT OF JURISDICTION 2

STATUTORY PROVISION INVOLVED 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT 5

I. The District Court's Lodestar Reductions Radically Depart from This Court's Precedents 5

II. The District Court's Arbitrary Selection of Hourly Billing Rates for Plaintiffs' Counsel Without Determining Prevailing Market Rates Deprives Plaintiffs of a Reasonable Fee Award 6

CONCLUSION 7

APPENDIX

Judgment Order of the Court of Appeals for the Third Circuit dated April 3, 1991 (Denying Petition for Rehearing and Rehearing In Banc) ... A-1

Judgment Order of the Court of Appeals for the Third Circuit dated February 22, 1991 (Affirming Fee Award) A-3

Opinion and Order of the United States District Court for the Middle District of Pennsylvania dated August 17, 1990 (Denying Motion for Reconsideration of Fee Award) A-5

TABLE OF CONTENTS – *(Continued)*

Page

Opinion and Order of the United States District Court for the Middle District of Pennsylvania dated May 17, 1990 (Awarding Attorney's Fees) A-10

Opinion and Order of the United States District Court for the Middle District of Pennsylvania dated March 21, 1990 (Granting in Part Plaintiffs' Motion for Reconsideration on the Merits) A-20

Opinion and Order of the United States District Court for the Middle District of Pennsylvania dated November 21, 1989 (Entering Judgment on Merits) A-24

TABLE OF AUTHORITIES

Cases: Page

Blum v. Stenson, 465 U.S. 886 (1984) 6, 7

Burney v. Housing Authority of County of Beaver, 735 F.2d 113 (3d Cir. 1984)..... 7

City of Riverside v. Rivera, 477 U.S. 561 (1986). 5, 6, 8

Hensley v. Eckerhart, 461 U.S. 424 (1983)..... 5

Statutes:

Fair Labor Standards Act, 29 U.S.C. §§201-219 (1978 and West Supp. 1991) ("FLSA")..... 3

Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§1801-1872 (1985 and West Supp. 1991) ("AWPA") 3

Pennsylvania Seasonal Farm Labor Act, 43 P.S. §§1301.101-1301.606 (1991) 3

Pennsylvania Wage Payment and Collection Law, 43 P.S. §§260.1-260.12 (Purdon Supp. 1991) . 3

No. 91-____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1990

ELIZABETH SHARPE, CYNTHIA SHARPE, LENROY SHARPE, ALBERT SHARPE, DAVID BECKFORD and LEROY BLAKE,

Petitioners,

vs.

PHILIP A. ROTH, APPLE VALLEY FARMS, INC. and P.A.R. ORCHARDS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The Petitioners, Elizabeth Sharpe, Cynthia Sharpe, Lenroy Sharpe, Albert Sharpe, David Beckford and Leroy Blake, respectfully pray that a writ of certiorari issue to review the judgment of the Court of Appeals for the Third Circuit, entered on February 22, 1991.

OPINIONS BELOW

The May 17, 1990 opinion and order of the district court awarding attorney's fees to petitioner farmworkers is not reported but is reprinted in the appendix ("Pet. App.") at A-10. The August 17, 1990 opinion and order of the district court denying petitioner farmworkers' motion for reconsideration of the court's attorney's fee award is reprinted at A-5.

The judgment order of the panel of the court of appeals affirming the May 17, 1990 order of the district court is reprinted at A-3. The judgment order of the court of appeals denying the farmworkers' petition for rehearing and rehearing in banc is reprinted at A-1.

STATEMENT OF JURISDICTION

The judgment order of the court of appeals was filed on February 22, 1991 (Pet. App. at A-3), and the farmworkers' timely petition for rehearing and rehearing in banc was denied by order dated April 3, 1991 (Pet. App. at A-1). This petition is being filed within 90 days of the order. Petitioners invoke this Court's jurisdiction under 28 U.S.C. §1254(1) (1988).

STATUTORY PROVISION INVOLVED

The pertinent statutory provision in this case is Section 216(b) of the Fair Labor Standards Act, 29 U.S.C. §§201-219 (1978 and West Supp. 1991), which provides:

> The court in such action [commenced pursuant to Section 206 of the Fair Labor Standards Act] shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

STATEMENT OF THE CASE

A. Facts

Petitioners Elizabeth Sharpe, Cynthia Sharpe, Lenroy Sharpe, Albert Sharpe, David Beckford and Leroy Blake[1] were indigent farmworkers employed by defendants Philip A. Roth, Apple Valley Farms, Inc. and P.A.R. Orchards, primarily to prune fruit trees, between early December 1987 and April 1988. In early 1988 the

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1. Two other farmworkers, Allen Campbell and Mable Wright, were unsuccessful plaintiffs in this action in the district court. Plaintiffs sought no attorney's fees relating to the segregable services counsel rendered to these two plaintiffs.

farmworkers sought assistance from Friends of Farmworkers, Inc. ("Friends of Farmworkers"), a small nonprofit legal services corporation, to resolve a number of wage claims the farmworkers had against defendants. After settlement attempts failed, the farmworkers filed a Complaint against defendants in the District Court for the Middle District of Pennsylvania. The Complaint alleged that defendants' failure to pay plaintiffs the wages they were due and to maintain proper records violated the Fair Labor Standards Act, 29 U.S.C. §§201-219 (1978 and West Supp. 1991)("FLSA"), the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§1801-1872 (1985 and West Supp. 1991) ("AWPA"), and two Pennsylvania labor statutes.[2] After a three day bench trial, the district court entered judgment for the farmworkers on most of their FLSA and AWPA claims and awarded them damages under both statutes. (Opinion and Order dated November 21, 1989, Pet. App. at A-24).[3] In response to the farmworkers' timely motion for reconsideration, the district court increased its AWPA award to four of the farmworkers. In sum, the district court awarded plaintiffs damages under FLSA and AWPA totalling $3,074.02. (Opinion and Order dated March 21, 1990, Pet. App. at A-20).

Pursuant to Section 216(b) of FLSA,[4] the farmworkers, as prevailing parties, timely applied for attorney's fees and costs in the amount of $65,918.94. They

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2. Pennsylvania Seasonal Farm Labor Act, 43 P.S. §§1301.101-1301.606 (1991); Pennsylvania Wage Payment and Collection Law, 43 P.S. §§260.1-260.12 (Purdon Supp. 1991).

3. The district court did not address the farmworkers' state law claims, but the court's factual findings also establish that defendants violated the Pennsylvania statutes. Because the remedies available under the state statutes overlap with those available under the federal statutes, the farmworkers did not move the court to amend its Order on this ground.

4. Section 216(b) directs the district court to award a "reasonable" attorney's fee plus costs to a prevailing party in litigation under the Act.

supported their application with detailed schedules identifying the time and services counsel rendered and affidavits supporting their hourly billing rates, including an affidavit stating that the hourly rates sought by the farmworkers' attorneys were consistent with prevailing community rates for comparable counsel in private practice.

B. The District Court's Fee Award and Subsequent Procedural History

The district court awarded plaintiff farmworkers a fee of $9,153.63 — less than 14% of the award they had requested. (Opinion and Order dated May 17, 1990, Pet. App. at A-10). To calculate the decreased award, the court doubly-reduced the lodestar using a methodology that conflicts with prior decisions of this Court. First, the court reduced the lodestar by 67% based on its conclusion that since AWPA does not contain a fee shifting provision, whereas FLSA does, plaintiffs' fee should be reduced to reflect the percentage that their FLSA award ($1,024.02) bore to their total damages award ($3,074.02). In doing so, the district court failed to address whether plaintiffs' fee carrying FLSA claims were related to their non-fee carrying AWPA claims.

The court then proceeded to reduce the lodestar by an additional 35% based on its conclusory finding that plaintiffs' fee petition was "vague," the issues in the case were "simple," the damages recovered were *"de minimis"*, the case benefitted only individuals, not a class, and involved "no civil rights or constitutional issues." (Opinion and Order dated May 17, 1990, Pet. App. at A-11-13).

Finally, the district court selected hourly billing rates for the farmworkers' attorneys without determining the prevailing community rates for comparable counsel.

After the district court denied the plaintiff farmworkers' timely motion for reconsideration of the fee

award, they appealed to the United States Court of Appeals for the Third Circuit. The court of appeals affirmed the district court by judgment order dated February 22, 1991, and denied the farmworkers' petition for rehearing and rehearing in banc on April 3, 1991.

REASONS FOR GRANTING THE WRIT

I.

THE DISTRICT COURT'S LODESTAR REDUCTIONS RADICALLY DEPART FROM THIS COURT'S PRECEDENTS.

Correctly, the district court concluded that plaintiffs were prevailing parties. Yet incorrectly it concluded that it was necessary to reduce the size of plaintiffs' lodestar fee to make it proportional to the damages plaintiffs recovered under their fee carrying FLSA claims.[5] By adopting such a rule of proportionality, the district court strayed from this Court's decision in *City of Riverside v. Rivera,* 477 U.S. 561 (1986).[6] It also strayed from the principles enunciated in *Hensley v. Eckerhart,* 461 U.S. 424, 435 n.11, 440 (1983) which required it to analyze whether plaintiffs' fee carrying claims were interrelated with their non-fee carrying AWPA claims.[7]

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5. The district court reasoned:

> The damages awarded to plaintiffs on the FLSA issues amount to $1,024.02; the damages awarded under AWPA amount to $2,050.00. Thus, fees are available on approximately thirty-three percent (33%) of the successful claims. After deducting certain hours which this court will not allow, a factor of 33% will be applied to the adjusted hours to reach the amount attributable to the FLSA claims.

(Opinion dated May 17, 1990, Pet. App. at A-11).

6. The district court's application of proportionality concepts is particularly remarkable because the court dutifully acknowledged that "attorney's fees need *not* be proportionate to damages received," citing *City of Riverside.* (Opinion dated May 17, 1990, Pet. App. at A-12) (emphasis in original).

7. This case demonstrates the illogic of the district court's simplistic approach. If the farmworkers had not succeeded on their motion for reconsideration to increase their AWPA damages, the

The result to plaintiffs was a drastic reduction – by some 67% – of the fee to which they were entitled by law. The district court's further reduction of the fee – by yet another 35% – to account for the *"de minimis"* amount of plaintiffs' damages (Pet. App. at A-12-13), the "simplicity" of the issues presented (Pet. App. at A-13), the individual nature of the case ("[t]he case was not a class action") (Pet. App. at A-11-12), and "the fact that no civil rights or constitutional issues were involved" (Pet. App. at A-13), only underscores the degree to which the district court disregarded applicable precedents of this Court. *See, e.g., Blum v. Stenson,* 465 U.S. 886, 898-900 (1984) (held that complexity or novelty of issues and the number of persons benefitted are not factors warranting an adjustment in the lodestar); *City of Riverside,* 477 U.S. at 575 (held that attorney's fees should not be reduced because of the amount of plaintiffs' damages or the fact that the relief obtained was nonpecuniary in character).

II.

THE DISTRICT COURT'S ARBITRARY SELECTION OF HOURLY BILLING RATES FOR PLAINTIFFS' COUNSEL WITHOUT DETERMINING PREVAILING MARKET RATES DEPRIVES PLAINTIFFS OF A REASONABLE FEE AWARD.

In *Blum v. Stenson,* this Court directed district courts to evaluate the prevailing market rates for comparable counsel when fixing appropriate hourly billing rates for attorney's fee awards. 465 U.S. at 895 n.11. The

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NOTES *(Continued)*

ratio of the total damages they received divided by their FLSA damages would have been approximately 2-to-1; therefore, under the district court's approach, the farmworkers would have been entitled to a greater fee award if they had been *less* successful on their non-fee carrying claims. This incongruous result is utterly inconsistent with this Court's mandate in *Hensley* that district courts focus on the "results obtained" by counsel.

Court's prevailing market rate requirement ensures that fee awards will be adequate to attract competent counsel without providing them a windfall at the losing defendant's expense.

In determining the hourly billing rates for the farmworkers' legal services counsel, the district court here inexplicably ignored the record evidence of prevailing rates for comparable counsel and adopted the substantially lower rates that another district court had previously approved for the same attorneys. (Opinion and Order dated May 17, 1990, Pet. App. at A-14-15). Significantly, that court had not determined prevailing billing rates in the relevant community because the parties in that case had stipulated to certain hourly rates as part of the settlement of the case. By adopting the lower hourly rates, the district court effectively circumvented this Court's market analysis requirement. *Blum,* 465 U.S. at 895 n.11. *See also Burney v. Housing Authority of County of Beaver,* 735 F.2d 113, 116 (3d Cir. 1984) (reversing hourly rate determination adopted from comparable case without conducting market analysis). If the district court's billing rate determination stands uncorrected, these farmworkers will have been deprived of a reasonable fee and their lawyers, other farmworker lawyers and civil rights lawyers generally will be less inclined to undertake litigation of this sort in the future – a result totally at odds with Congress' intent in enacting fee-shifting statutes such as the FLSA.

CONCLUSION

The only ones to benefit by the district court's aberrant fee decision are the defendants who were found to have violated plaintiffs' rights to a fair wage. By drastically reducing plaintiffs' fee, the district court effectively rewarded defendants for violating plaintiffs' rights. It also sent a clear message to plaintiffs' lawyers: cases of this sort are not desirable. Its ruling "make[s] it

difficult, if not impossible, for individuals with meritorious civil rights claims but relatively small potential damages to obtain redress from the courts." *City of Riverside,* 477 U.S. at 578.

For the reasons stated, the farmworkers' petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: July 2, 1991

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 90-5804

ELIZABETH SHARPE; CYNTHIA SHARPE;
LENROY SHARPE; ALBERT SHARPE; DAVID BECKFORD;
LEROY BLAKE; ALLEN CAMPBELL; MABLE WRIGHT;
Appellants

v.

PHILIP A. ROTH; APPLE VALLEY FARMS, INC.;
P.A.R. ORCHARDS

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil No. 88-00814)

SUR PETITION FOR REHEARING

PRESENT: SLOVITER, *Chief Judge,* and BECKER, STAPLETON MANSMANN, GREENBERG, HUTCHINSON, SCIRICA, COWEN, NYGAARD and ALITO, *Circuit Judges,* and FISHER, *District Judge**

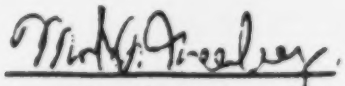
The petition for rehearing filed by appellants in the above captioned matter having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active

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*Honorable Clarkson S. Fisher, United States District Judge for the District of New Jersey, sitting by designation.

service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT:



Circuit Judge

DATED: April 3, 1991

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 90-5804

ELIZABETH SHARPE; CYNTHIA SHARPE;
LENROY SHARPE; ALBERT SHARPE; DAVID BECKFORD;
LEROY BLAKE; ALLEN CAMPBELL; MABLE WRIGHT;
Appellants

v.

PHILIP A. ROTH; APPLE VALLEY FARMS, INC.;
P.A.R. ORCHARDS

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil No. 88-00814)
District Judge: Honorable Sylvia H. Rambo

Argued February 19, 1991

BEFORE: GREENBERG and COWEN, *Circuit Judges,*
and FISHER, *District Judge**

JUDGMENT ORDER

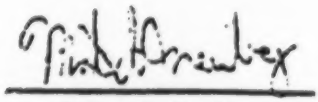
After consideration of all contentions raised by appellants, it is

ADJUDGED and ORDERED that the judgment of the district court entered May 17, 1990, be and the same is hereby affirmed.

*Honorable Clarkson S. Fisher, United States District Judge for the District of New Jersey, sitting by designation.

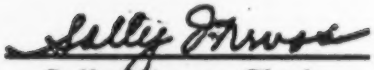
Costs taxed against appellants.

BY THE COURT:



Circuit Judge

ATTEST:



Sally Jurvos, Clerk

DATED: February 22, 1991

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ELIZABETH SHARPE; CYNTHIA SHARPE; LENROY SHARPE; ALBERT SHARPE; DAVID BECKFORD; LEROY BLAKE; ALLEN CAMPBELL; and MABLE WRIGHT,	:	CIVIL ACTION
Plaintiffs	:	No. 88-0814
v.	:	
PHILIP A. ROTH; APPLE VALLEY FARMS, INC.; and P.A.R. ORCHARDS,	:	FILED Harrisburg, Pa. August 17, 1990 Donald R. Berry, Clerk
Defendants	:	PER [signature] Deputy Clerk

MEMORANDUM AND ORDER

On May 17, 1990, this court issued a memorandum and order granting attorney fees and costs. Plaintiffs have filed a motion for reconsideration of the award. Plaintiffs essentially dispute the court's calculation of the lodestar as to hours and rates and the application of a negative multiplier.

Eight plaintiffs each filed claims under the Fair Labor Standards Act (FLSA), 29 U.S.C. §216(b), the Pennsylvania Seasonal Farm Labor Act (SFLA), Pa. Stat. Ann. tit. 43, §§1301.101-1301.606 (Purdon Supp. 1989), the Pennsylvania Wage Payment and Collection Lav (WPCL) Pa. Stat. Ann. tit. 43, §260.9a(f) (Purdon Supp. 1989), and the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), 29 U.S.C. §1801, et seq. The latter does not provide for recovery of attorney fees. In addition to monetary damages plaintiffs also sought injunctive and declaratory relief.

In its previous memorandum, the court found that the damages awarded to plaintiffs on the FLSA issue amounted to $1,024.02; the damages under AWPA

amounted to $2,050.00 and therefore that fees were available on approximately thirty-three percent (33%) of the successful claims. Plaintiffs argue that this is a proportionality approach prohibited by current case law. *City of Riverside v. Rivera,* 477 U.S. 561 (1986); *Cunningham v. City of McKeesport,* 807 F.2d 49 (3d Cir. 1986); *(Cunningham II), cert. denied,* 481 U.S. 1049 (1987); and *Northeast Women's Center v. McMonagle,* 889 F.2d 466 (3d Cir. 1989). This court does not believe the rule against proportionality has been violated.

This court has attempted to apply the principles of *Hensley v. Eckhart,* 461 U.S. 424 (1983), in which the Court held:

> We hold that the extent of a plaintiff's success is a crucial factor in determining the proper amount of an award of attorney's fees . . . . Where the plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee. Where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fee reduced simply because the district court did not adopt every contention raised. But where the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained.

Id. at 435-40. Plaintiffs were successful in obtaining results for four of eight people under a fee shifting statute. Therefore, the overall success rate was one fourth or twenty-five percent (25%). The recovery for two people under the fee shifting statute was diminimus—one plaintiff recovered $3.55 and another $8.75. The bulk of the recovery or 99% of the FSLA claim is attributable to two people—Elizabeth and Cynthia Sharpe. Again, however, plaintiffs are likely to see this as a proportionality approach.

Another approach would be to look at every hour or work description and attempt to determine the work applicable to Elizabeth and Cynthia Sharpe. Defendants at pages 12 through 14 of their response to the fee petition attempted this. For instance, the deposition of Philip Roth totaled 524 pages, but only 17 relate to Elizabeth and Cynthia Sharpe. Document production of Roth totaled 823 documents, but only one document related to Elizabeth or Cynthia Sharpe. Time spent on interviews of Elizabeth and Cynthia Sharpe can not be segregated but the following hours are attributed in part to them.

Date	Time	Plaintiff
01/26/88	6.2	E. Sharpe, L. Sharpe, C. Sharpe A. Sharpe, Beckford and Blake
02/16/88	0.7	E. Sharpe
09/25/89	3.0	E. Sharpe, L. Sharpe, Blake
10/01/89	3.5	E. Sharpe, L. Sharpe, Blake and Beckford
10/04/89	3.0	E. Sharpe, L. Sharpe, Blake
10/04/89	0.5	E. Sharpe, L. Sharpe, Blake
04/09/88	5.3	E. Sharpe, L. Sharpe, Blake and Beckford
04/21/88	2.7	E. Sharpe, L. Sharpe, Blake and Beckford
04/22/88	6.3	E. Sharpe, L. Sharpe, Blake and Beckford
05/12/88	0.3	E. Sharpe and A. Sharpe
07/27/88	4.3	E. Sharpe, L. Sharpe, Blake and Beckford
08/25/88	0.3	E. Sharpe
09/01/88	0.8	E. Sharpe
09/06/88	2.1	E. Sharpe, Blake, Beckford
09/07/88	2.3	E. Sharpe and L. Sharpe
09/08/88	7.9	E. Sharpe, L. Sharpe, Blake and Beckford
09/22/88	2.7	E. Sharpe, Blake and Beckford
09/26/88	2.1	C. Sharpe
06/04/89	0.3	C. Sharpe
09/11/89	0.3	E. Sharpe

Preparations for and the taking of depositions are shown as follows:

Date	Time	Plaintiff
10/10/88	4.4	Depositions of E. Sharpe, L. Sharpe and Blake
10/27/88	2.7	Deposition preparation for A. Sharpe and C. Sharpe
10/27/88	2.1	Deposition of A. Sharpe and C. Sharpe
10/09/89	3.7	Deposition preparation of E. Sharpe, L. Sharpe, Blake and Beckford
10/26/88	3.6	Deposition preparation of C. Sharpe and A. Sharpe

The videotape deposition of Cynthia Sharpe began at 11:22 a.m. on October 27, 1988 and concluded at 11:37 a.m. Her testimony was approximately fifteen minutes. (Plaintiffs' Exhibit 9.20.01.) Elizabeth Sharpe's deposition is not of record. Her trial testimony consumed the following time:[1] direct examination - 25 minutes; cross examination - 5 minutes; redirect examination - 3 minutes; recross examination - 1 minute, for a total of 34 minutes out of 20.5 trial hours over a three day period. A review of the trial transcript reflects that during the defense presentation the Cynthia Sharpe and Elizabeth Sharpe issues covered fifteen pages of a 485 page transcript. (Tr. at 264 line 23 to 275 line 17 (direct); 414 line 4 to 419 line 5 (cross).) No matter how one approaches this case, the results achieved and time devoted to the Elizabeth and Cynthia Sharpe issues do not warrant the entire amount of fees requested.

Furthermore, the Elizabeth Sharpe and Cynthia Sharpe issues are discrete claims.[2] In *Hensley* the Court stated, "The applicant . . . should maintain billing time

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1. Time is computed from minute sheets prepared by the Deputy Clerk of Court.

2. In this regard the first sentence of the first main paragraph on page 2 of this court's order of May 17, 1990 is retracted.

records in a manner that will enable a reviewing court to identify distinct claims." *Hensley,* 461 U.S. at 437. Plaintiffs' counsel are not novices to either fee petitions or the statutes involved in farm litigation. They know what is required in fee petitions. They know what issues come under fee shifting statutes and it would not have been difficult to keep the time records separate for these issues. Experienced counsel in filing fee petitions should be at risk when not complying with case law on fee petitions whether through inadvertence, indifference, deliberate action or mismanagement, and the courts should not be put to the task of attempting to make any award comply with case law by reconstructing attorneys' records.

This court has been generous in its award of fees and will not alter the award. The other objections raised in the motion for reconsideration will not be considered. The court notes the allegations that plaintiffs were denied the right to reply to defendants' allegations and that they were denied an evidentiary hearing. It is the recollection of court personnel that Mr. Read called and advised he was not going to file a reply. In any event, the absence of a specific direction from the court to file a reply brief is no indication that a reply brief was prohibited. As to an evidentiary hearing, none was requested. Rules 602.3 and 404 of the Rules of Court for the Middle District of Pennsylvania.

In any event, plaintiffs in their motion for reconsideration have not even made a proffer as to how such a hearing would assist this court or plaintiffs' position.

Therefore, IT IS ORDERED THAT plaintiffs' motion for reconsideration is denied.



SYLVIA H. RAMBO
United States District Judge

Dated: August 17, 1990.

Certified from the record
Date 5/17/90
Donald R. Berry, Clerk

Per _____,
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ELIZABETH SHARPE; CYNTHIA SHARPE; LENROY SHARPE; ALBERT SHARPE; DAVID BECKFORD; LEROY BLAKE; ALLEN CAMPBELL; and MABLE WRIGHT,	:	CIVIL ACTION No. 88-0814
Plaintiffs	:	FILED Harrisburg, Pa. May 17, 1990 Donald R. Berry, Clerk
v.	:	
PHILIP A. ROTH; APPLE VALLEY FARMS, INC.; and P.A.R. ORCHARDS,	:	PER _____ Deputy Clerk
Defendants	:	

MEMORANDUM

Plaintiffs have filed for attorneys' fees and costs pursuant to the Fair Labor Standards Act (FLSA), 29 U.S.C. §216(b), the Pennsylvania Seasonal Farm Labor Act (SFLA), Pa. Stat. Ann. tit. 43, §§1301.101-1301.606 (Purdon Supp. 1989) and the Pennsylvania Wage Payment and Collection Law (WPCL), Pa. Stat. Ann. tit. 43, §260.9a(f) (Purdon Supp. 1989). Plaintiffs were the prevailing parties in the captioned litigation.

In this case there were claims under the FLSA and the Migrant and Seasonal Agricultural Worker Protection Act (AWPA). The latter does not provide for the recovery of attorney's fees. *Alvarez v. Longboy,* 697 F.2d

1333 (9th Cir. 1983). In *Hensley v. Eckerhart,* 461 U.S. 424 (1983), the Court held, "Where the plaintiff has failed to prevail on a claim that is distinct in all respects from his unsuccessful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee." *Id.* at 440. The Court also stated, "The applicant . . . should maintain billing time records in a manner that will enable a reviewing court to identify distinct claims." *Id.* at 437.

In the captioned case, there are no successful versus unsuccessful claims to analyze to determine the degree of success achieved; nor is this court presented with clearly related versus unrelated claims. In this regard the court acknowledges the claims under FLSA are different from those under AWPA. However, in the prosecution of the litigation—the discovery, the preparation for trial—the issues were treated as overlapping. Therefore, there has been no delineation of time devoted to FLSA versus AWPA claims. Whether this occurred because of mere inadvertence or otherwise, plaintiffs should not recover fees without some effort to segregate work on the various portions of the case. The damages awarded to plaintiffs on the FLSA issues amount to $1,024.02; the damages awarded under the AWPA amount to $2,050.00. Thus, fees are available on approximately thirty-three percent (33%) of the successful claims. After deducting certain hours which this court will not allow, a factor of 33% will be applied to the adjusted hours to reach the amount attributable to the FLSA claims.

Of further concern to the court is the fact that there was an excessive amount of time expended considering the size of the case and the issues involved. This case was not handled efficiently. The FLSA awards were personal to four individual plaintiffs.[1] The case was not

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1. This court recognizes a negative multiplier cannot be applied simply because a civil rights question is by its nature singular to a plaintiff, *Cunningham v. City of McKeesport,* 753 F.2d 262, 269

a class action case. There were no unprecedented questions of law involved and no fundamental civil or constitutional rights were vindicated. Hours spent on certain tasks were inordinate. For instance, 57.3 hours are attributed to client interviews—all conducted *after* the depositions of most of the parties in the case had been taken. In addition, the time spent on preparing complaints, preparation for trial, and trial memoranda was also excessive. The law project representing plaintiffs specializes in farm labor law. Resources such as briefs, complaints, interrogatory forms, and the like should be available from previous litigation. The court agrees with defendants that the case was prepared and prosecuted unreasonably. The court notes with interest the case cited by defendants—*Clark v. Atlanta Newspapers, Inc.*, 366 F. Supp. 886 (N.D. Ga. 1973). In *Clark* the court "emphatically agree[d] that plaintiff overtried his case. . . . The statutory award of costs and attorney fees . . . cannot be taken by counsel as a blank check to prepare his case without reference to costs involved." *Id.* at 899.

This court emphasizes that it is not attempting to reach a fee award based on proportionality to the damages award. Indeed, the court recognizes that attorney fees need *not* be proportionate to damages received. *See, e.g.; Riverside v. Rivera,* 477 U.S. 561 (1986). The fees awarded in this case are not based on proportionality. Rather, it is this court's opinion that counsel is responsible for tailoring the litigation with an eye towards the potential results. Plaintiffs knew the maximum award that could possibly be attained was $14,500. That result would be achieved only if all plaintiffs prevailed on all claims of statutory violations and were awarded the maximum statutory damages. By January 1989, plaintiffs' damage proposal for settlement was $5703.50. The

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NOTES *(Continued)*

(3d Cir. 1985). However, the instant case involves no civil rights issues.

fee petition submitted indicates that counsel threw cost effective management of litigation out the window.

In *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), the court considered awards in similar cases as a factor in determining a reasonable fee. *Id.* at 717-19. Exhibit A to defendants' brief in opposition to attorney fees sets forth a list of cases showing FLSA awards and attorney fees allowed. One case is a Third Circuit case in which the award was $23,813 and the fee allowed was $2,500.

Normally the concerns raised above might cause a court to adjust the lodestar downward. This cannot be done in this case. As noted previously, the court is unable to determine what hours applied to FLSA issues and what hours applied to AWPA issues. Furthermore, the supporting documents to the fee petition are lacking. The are no contemporaneous time slips available to review. *See Hensley,* 461 U.S. at 437.

This court is faced with the fact that some successful plaintiffs are entitled to claims for attorney's fees and costs and other successful plaintiffs are not. But even attributing 33% of the hours to the FLSA claims does not solve the court's dilemma. The court has also considered the vagueness of the petition with respect to precise work performed; the simplicity of the issues involved; the minimal results achieved, and the fact that no civil rights or constitutional issues were involved. The foregoing, combined with counsels' expertise should have curtailed long hours of research and preparation. This court recognizes that applying a negative multiplier is not a course that should be taken frequently. However, the preferred method of reducing hours cannot be followed in this case for reasons previously stated. Fairness demands that the negative multiplier be applied in this case.

John Mark Finnegan

The rate to be applied to attorney Finnegan's time will be $90.00 per hour. This is consistent with the rate approved by Judge Weiner in *Reyes-Garcia v. New Garden Farms, Inc.*, No. 88-1629 (E.D. Pa. 1989). Mr. Finnegan seeks compensation for 280.7 hours. The 5.4 hours for preparation of the pretrial memorandum and 11.2 hours for work on the counterclaim will be deleted as duplicative of time spent by Attorney Reed. The 3.5 hours for taking the video will be deleted as not related to the FLSA claim. Further, the 109 "discounted" hours will be deleted. There is no explanation given for these hours being discounted and the court notes that Mr. Reed did not include his "discounted" hours. Therefore, the following computation results for Mr. Finnegan:

Hours claimed	280.70		
Hours deleted	–129.10		
Subtotal	151.60		
33% FLSA factor x	.33		
Subtotal	50.03	x 90.00 per hour	= $4,502.70
Travel hours	125.50		
33% to FLSA	x .33		
Subtotal	41.42	x 35.00 per hour	= $1,449.70
Subtotal			$5,952.40
less 35% negative multiplier	5,952.40	x .35	= –2,083.34
Total			$ 3,869.06

Arthur Reed

Attorney Reed's time will be compensated for at a rate of $130 per hour on hours other than those billed at

the $50.00 rate (for analysis of computerized data). The $130 rate also is consistent with that approved in *Reves-Garcia*.

Hours at $130 rate		124.50		
Hours deleted	–	18.20[2]		
Subtotal		106.30		
33% FLSA factor	x	.33		
Subtotal		35.08	x 130.00 per hour =	$4,560.40
Hours at $50 rate		44.50		
33% FLSA factor	x	.33		
Subtotal		14.69	x 50.00 per hour =	$ 734.50
Travel hours		25.10		
33% FLSA factor	x	.33		
Subtotal		8.28	x 35.00 =	$ 289.80
Subtotal				$5,584.70
less 35% negative multiplier		5,584.70	x .35 =	–1,954.65
Total				$3,630.05

2. These hours are attributed to settlement. This court believes settlement could have been effected but for plaintiffs' counsel placing different interpretations and alterations on the proposed terms of the settlement agreement. It is the opinion of the court that settlement was effectively scuttled by plaintiffs' counsels' insistence that the settlement be tied into *Chandler v. Apple Valley Farms, Inc.*, No. 84-1573 (M.D. Pa.), which involved a consent decree and provided for injunctive relief.

Paralegal Fees

The paralegal rate will be assessed at $35.00 per hour. The Community Legal Service Fee Schedule (Plaintiffs' Exhibit A) suggests fees ranging from $20.00 to $35.00 per hour. Effective June 21, 1989, those rates changed to $40 to $60 per hour. The paralegal work that extended beyond June 21, 1989 consisted of videotape editing and transporting witnesses for trial. The videotape was not applicable to the FLSA claim. The $35.00 rate is therefore reasonable. It is noted that Attorneys Finnegan and Reed charged $35.00 per hour for travel time. The paralegal travel time will be assessed at $15.00 per hour.

The following hours will be deducted: 6.0 hours for videotaping and editing and 10.8 hours for indexing depositions.

Hours claimed		106.20		
Hours deleted		– 16.80		
Subtotal		89.40		
33% FLSA factor	x	.33		
Subtotal		29.50 x 35.00 per hour	=	$1,032.50
Travel hours		17.50		
33% FLSA factor	x	.33		
Subtotal		5.78 x 15.00	=	$ 86.70
Subtotal				$1,119.40
less 35% negative multiplier		1,119.40 x .35	=	391.79
Total				$ 727.61

Costs

All Express Mail costs will be denied. Unless Express Mail was directed by the court, the only other apparent reason for not using regular mail service is to gain extra time. Defendants will not be penalized for plaintiffs' counsels' use of such expensive services.

The allowance for Dr. Cupingood's fees will be $30.00 per day pursuant to *West Virginia Univ. Hosps., Inc. v. Casey,* No. 89-5165, slip op. at 43-50 (3d Cir. Sept. 5, 1989) (limiting expert fee to same amount provided for lay witnesses by 28 U.S.C. §1821(b)). Likewise, the witness fee for Joslyn Brown will be reduced to the $30.00 fee allowed for lay witnesses. *See* 28 U.S.C. §1821(b).

Deductions will be as follows:

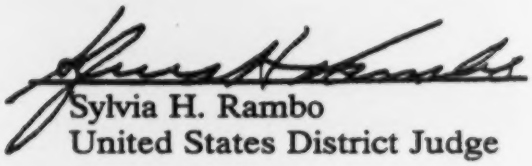
Express Mail	156.13
Difference in Cuppingood fee	815.00
Difference in Brown witness fee	15.00
Total	$ 986.13
Costs Claimed	$3,794.94
Less deductions	$ 986.13
Subtotal	$2,808.81
FLSA factor	x .33
Total costs	$ 926.91

Recapitulation

Fees and costs awarded to Friends of Farmworkers will be as follows:

John Finnegan	$3,869.06
Arthur Reed	$3,630.05
Paralegal Fees	$ 727.61
Costs	$ 926.91
Total	$9,153.63

An appropriate order will be issued.



Sylvia H. Rambo
United States District Judge

Dated: May 17, 1990.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ELIZABETH SHARPE; CYNTHIA SHARPE; LENROY SHARPE; ALBERT SHARPE; DAVID BECKFORD; LEROY BLAKE; ALLEN CAMPBELL; and MABLE WRIGHT,	:	CIVIL ACTION No. 88-0814
Plaintiffs	:	FILED Harrisburg, Pa. May 17, 1990 Donald R. Berry, Clerk
v.	:	
PHILIP A. ROTH; APPLE VALLEY FARMS, INC.; and P.A.R. ORCHARDS,	:	PER Ann Swanson Michael Deputy Clerk
Defendants	:	

ORDER

In accordance with the accompanying memorandum, IT IS HEREBY ORDERED THAT defendants shall pay plaintiffs' counsel fees and costs in the amount of $9,153.63.

Sylvia H. Rambo
United States District Judge

Dated: May 17, 1990.

Certified from the record
Date May 17, 1990
Donald R. Berry, Clerk

Per Ann Swanson Michael
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ELIZABETH SHARPE; CYNTHIA SHARPE; LENROY SHARPE; ALBERT SHARPE; DAVID BECKFORD; LEROY BLAKE; ALLEN CAMPBELL; and MABLE WRIGHT,	:	CIVIL ACTION
	:	No. 88-0814
	:	
	:	(Judge Rambo)
	:	
	:	FILED
Plaintiffs	:	Harrisburg, Pa.
	:	March 21, 1990
v.	:	Donald R. Berry, Clerk
PHILIP A. ROTH; APPLE VALLEY FARMS, INC.; and P.A.R. ORCHARDS,	:	
	:	PER _____
	:	Deputy Clerk
Defendants	:	

MEMORANDUM

Before the court is plaintiffs' motion for reconsideration of this court's Judgment Order dated November 21, 1989 in which this court awarded damages to some of the plaintiffs because of defendants' violations of the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), 29 U.S.C. §§1801-72. The defendants have responded and the matter is ripe for consideration.

At pages 5-6 of plaintiffs' motion, they argue that Lenroy Sharpe, Albert Sharpe and Leroy Blake were not awarded damages for defendants' violation of 29 U.S.C. §1821(d)(2) and that David Beckford was not awarded damages for defendants' violation of 29 U.S.C. §1831(c)(2). This court did, in fact, find such violations. Memorandum of Court dated November 21, 1989 (Memorandum of Court) at 20 (Conclusion of Law No. 8). An appropriate adjustment will be made to the Judgment Order for damages.

Plaintiffs also argue that although the court found "there is some evidence that . . . Leroy Blake was not

timely paid piece rate wages (January 6, 1988)," (Plaintiff's Motion at 6 (citing Memorandum of Court at 18), the court did not specifically find that defendants violated 29 U.S.C. §1822(a) as to Leroy Blake. Plaintiffs are correct and an appropriate adjustment will be made to the Judgment order.

This court will also accept plaintiffs' observation that the Department of Labor Report included a past incident that could be equated with similar conduct in this case, *i.e.,* permitting more than one worker to pick on one ticket. The court's initial rejection of this incident was based on the narrow approach that this case did not involve a "picking" incident. The court agrees that two people trimming and pruning on one ticket is analogous to the incident cited in the Department of Labor Report.

Plaintiffs further contend that in assessing damages in this case the court did not consider the costs to plaintiffs of bringing this suit. Considering such a factor is appropriate, *Montelongo v. Meese,* 803 F.2d 1341, 1350 (5th Cir. 1986), *cert. denied,* 481 U.S. 1048 (1987), and the court will do so.

The plaintiffs' claim that the court did not give adequate consideration to the settlement and order in *Chandler v. Apple Valley Farms, Inc.,* Civil No. 84-1573 (M.D. Pa. October 25, 1985), is well taken. This court initially viewed *Chandler* as a case involving issues of the use of independent farm labor contracts for hiring farm workers and the supplying of alcohol to workers. In *Chandler,* the failure to provide information on terms and conditions of employment and wages was not attributable to the personal activity of Roth. Rather, Roth's farm recruiter was specifically responsible for those infractions and, therefore, this court did not deem *Chandler* pertinent to this case. This court recognizes, however, that under the *Chandler* settlement and order Roth is required to pay lawful wages, maintain accurate records on each worker as required by the Department of Labor and maintain a record of workers' addresses. These matters are directly pertinent to this case.

These omissions by the court will be compensated for in an upward adjustment in the assessment of damages. Although plaintiffs argue that the highest allowable award is necessary to achieve maximum deterrence of future violations, the court declines to award the maximum amount. This is because the court believes plaintiffs caused many of the inaccuracies in the reporting of hours and pieces. Roth's installation of the time clock took care of part of the problem but his testimony at trial reveals just how difficult it is to keep control over an operation when workers ignore instructions and do as they please. Additionally, plaintiffs have another potential avenue through which they may obtain relief against Roth. They already have filed a motion to extend the injunction imposed in *Chandler* based on the violations found in this case.

The court will not make any adjustment in the damages awarded to Elizabeth and Cynthia Sharpe. It is the opinion of this court that these two women never expected to be paid. They assisted their husbands to enable their husbands to increase their piece rates. This, of course, does not excuse Roth from paying them wages but it does bear upon any assessment imposing a form of punishment.

Lenroy Sharpe's AWPA damages awarded November 21, 1990 will be amended as follows:

Violation Citation	Award	Total
29 U.S.C. §1821(d)(2)	$100.00	
29 U.S.C. §1821(f)	$250.00	
Lenroy Sharpe Total		$350.00

Albert Sharpe's AWPA damages awarded November 21, 1990 will be amended as follows:

Violation Citation	Award	Total
29 U.S.C. §1821(d)(2)	$100.00	
29 U.S.C, §1822(a)	100.00	
29 U.S.C. §1821(f)	100.00	
Albert Sharpe Total		$300.00

Leroy Blake's AWPA damages awarded November 21, 1990 will be amended as follows:

Violation Citation	Award	Total
29 U.S.C. §1821(d)(2)	$100.00	
29 U.S.C. §1821(f)	$250.00	
(tree issue and false records)		
29 U.S.C. §1822(a)	$100.00	
Leroy Blake Total		$450.00

David Beckford's AWPA damages awarded November 21, 1990 will be amended as follows:

Violation Citation	Award	Total
29 U.S.C. §1831(c)(2)	$100.00	
29 U.S.C. §1831(e)	$250.00	
David Beckford Total		$350.00

An amendment will also be made to the court's conclusions of law to reflect a finding of a violation of 29 U.S.C. §1822(a) as to Leroy Blake. An appropriate order will be issued.

Sylvia H. Rambo
United States District Judge

Dated: March 21, 1990.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ELIZABETH SHARPE; CYNTHIA SHARPE; LENROY SHARPE; ALBERT SHARPE; DAVID BECKFORD; LEROY BLAKE; ALLEN CAMPBELL; and MABLE WRIGHT,	:	CIVIL ACTION No. 88-0814 (Judge Rambo)
Plaintiffs	:	FILED Harrisburg, Pa. March 21, 1990
v.	:	Donald R. Berry, Clerk
PHILIP A. ROTH; APPLE VALLEY FARMS, INC.; and P.A.R. ORCHARDS,	:	PER Deputy Clerk
Defendants	:	

ORDER AMENDING JUDGEMENT

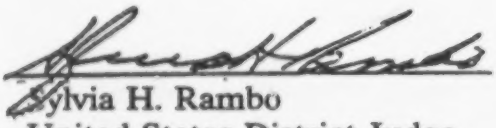
In accordance with the accompanying memorandum, IT IS HEREBY ORDERED THAT:

1) plaintiffs' motion for reconsideration is granted in part and denied in part;

2) Conclusion of Law number 9 in the Memorandum of Court dated November 21, 1989 is amended to read as follows: "Defendants violated 29 U.S.C.S. §1822(a) as to Elizabeth, Cynthia and Albert Sharpe and Leroy Blake;"

3) the November 21, 1989 Judgment Order of this court is amended to reflect the following damage awards:

Plaintiff	Amount of Award
Elizabeth Sharpe	Same ($705.36)
Cynthia Sharpe	Same ($906.36)
Albert Sharpe	$ 303.55
Leroy Blake	$ 458.75
Lenroy Sharpe	$ 350.00
David Beckford	$ 350.00



Sylvia H. Rambo
United States District Judge

Dated: March 21, 1990.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ELIZABETH SHARPE; CYNTHIA SHARPE; LENROY SHARPE; ALBERT SHARPE; DAVID BECKFORD; LEROY BLAKE; ALLEN CAMPBELL; and MABLE WRIGHT,	:	CIVIL ACTION No. 88-0814
Plaintiffs	:	FILED Harrisburg, Pa. November 21, 1989 Donald R. Berry, Clerk
v.	:	
PHILIP A. ROTH; APPLE VALLEY FARMS, INC.; and P.A.R. ORCHARDS,	:	PER [signature] Deputy Clerk
Defendants	:	

MEMORANDUM

Background

Plaintiffs are alleged to be agricultural workers who performed pruning services for defendants at various times between December 1987 and April 1988. Plaintiffs allege that while they performed this work the defendants violated the Fair Labor Standards Act (FLSA), 29 U.S.C.S. §§201-219 (Law. Co-op. 1975 & Supp. 1989), by failing to pay minimum wage; the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), 29 U.S.C.S. §§1821(d)(1) and (2), 1821(f), 1822(a), and 1822(c) (Law. Co-op. 1982 & Supp. 1989); and the Pennsylvania Seasonal Farm Labor Act (PSFLA), 43 Pa. Cons. Stat. Ann. §1301.205 (Purdon Supp. 1989).

Specifically, plaintiffs Elizabeth Sharpe, Cynthia Sharpe, Allen Campbell and Mabel Wright allege they provided labor to defendants for which they were not paid. All plaintiffs further allege defendants failed to maintain proper payroll records, failed to disclose the terms and conditions of employment, provided false and

misleading information, failed to pay on time, failed to comply with working arrangements and retaliated against the plaintiffs.

Plaintiffs seek declaratory and equitable relief under the PSFLA, unpaid minimum wages and equal amounts in liquidated damages under FLSA, and statutory damages under AWPA. A non-jury trial was held on October 5, 6 and 10, 1989. Set forth hereafter are the court's findings of fact, discussion and conclusions of law.

Findings of Fact

1. Plaintiff Beckford at all times relevant to this suit, resided at an apartment house in Mercersburg, Pennsylvania with a Post Office Box 261.

2. The Beckford address is a permanent residence.

3. Plaintiff Leroy Blake resided with Beckford for a period of time and then moved to 366 Loudon Street, Chambersburg, Pennsylvania.

4. Elizabeth Sharpe, Lenroy Sharpe, Albert Sharpe and Cynthia Sharpe lived for a period of time in Mercersburg, Pennsylvania and then moved to 366 Loudon Street, Chambersburg, Pennsylvania.

5. All the Sharpes and Leroy Blake traveled to various fruit farms for seasonal work prior to going to work for defendants.

6. The Sharpes and Blake maintained a permanent residence in Winterhaven, Florida.

7. Defendant Roth maintains his residence and business at Fairfield, Adams County, Pennsylvania.

8. Plaintiff Beckford had worked pruning trees for defendants prior to December 1987.

9. On two occasions in December 1987, defendant Roth spoke with plaintiff Beckford about Beckford referring prospective employees to defendant Roth.

10. No other worker except plaintiff David Beckford had a conversation with defendant Roth on December 1, 1987 about defendant Roth's need for more workers.

11. Roth's response to Beckford was as follows: "Yes, I could use a couple more. Have them see me."

12. On December 1, 1987 David Beckford and Leroy Blake each began work for defendants. Plaintiffs David Beckford and Leroy Blake began work for defendants before receiving any written disclosure of work terms and conditions from defendants.

13. On December 7, 1987 Albert Sharpe and Lenroy Sharpe went to defendants' farm in the company of David Beckford and Leroy Blake.

14. On December 7, 1987 Albert Sharpe and Leroy Blake each began work for defendants.

15. Plaintiff Leroy Blake had never been to defendant Roth's farm prior to December 1987.

16. Plaintiff Lenroy Sharpe had never been to defendant Roth's farm prior to December 1987.

17. Plaintiff Albert Sharpe had never been to defendant Roth's farm prior to December 1987.

18. On December 7, 1987 Roth presented Albert Sharpe and Lenroy Sharpe with a completed form, signed by Roth, entitled "Contract of Employment and Disclosure," which in each case bore a date of December 6, 1987.

19. On December 7, 1987 Albert Sharpe and Lenroy Sharpe executed the "Contracts of Employment and Disclosure."

20. The "Contracts of Employment and Disclosure" executed by Albert Sharpe and Lenroy Sharpe accurately set out the address and social security number furnished to Roth by each of those persons.

21. On December 7, 1987 Roth gave Albert Sharpe and Lenroy Sharpe each a copy of the "Contract of Employment and Disclosure" executed by them.

22. On December 14, 1987 plaintiff David Beckford informed defendants that pruners Oral Gordon and James Clarke would not be returning to work for defendants. Mr. Beckford then asked Mr. Roth whether Mr. Roth wanted people to replace Mr. Gordon and Mr.

Clarke. Mr. Roth replied that he would take two people as replacements.

23. On December 16, 1987 David Beckford brought a person named Davis to the defendants' farm and introduced Davis to Roth.

24. On December 16, 1987 Davis, in Beckford's presence, asked Roth for work and Roth agreed to employ him.

25. Defendant Roth never spoke to any worker except plaintiff David Beckford about defendants' need for additional workers.

26. On several occasions from December 1987 until April 1989 Mr. Roth observed that plaintiffs David Beckford, Leroy Blake, Albert Sharpe, and Lenroy Sharpe, or some of them, would arrive at the farm in one or more automobiles containing one or more women.

27. Mr. Roth on various occasions encountered in block 9-N of the orchard one or both of two women, both of whom were black, one of whom was corpulent, Elizabeth Sharpe, and the other of whom was smaller, Cynthia Sharpe.

28. On a few occasions the dates of which Mr. Roth does not presently recall, he encountered Elizabeth Sharpe and/or Cynthia Sharpe raking prunings near the areas in which Lenroy Sharpe and/or Albert Sharpe were then pruning.

29. In general, when Mr. Roth observed either or both women among the trees in the worksite, the larger woman – Elizabeth Sharpe – was most often seen in rows of trees where Lenroy Sharpe was assigned to prune and the smaller woman – Cynthia Sharpe – was most often seen in rows of trees where Albert Sharpe was assigned to prune.

30. On one occasion Roth discovered Elizabeth Sharpe pruning or attempting to prune a tree.

31. On that occasion Roth spoke with Elizabeth Sharpe and asked her what she was doing.

32. When Roth discovered Elizabeth Sharpe pruning, Roth then asked the woman to give him the pruning

shears, which she did, whereupon Mr. Roth himself reworked the lower portion of the tree.

33. Roth did not speak to Lenroy Sharpe about defendant Roth finding Elizabeth Sharpe pruning the base of a tree in Lenroy Sharpe's row. Lenroy Sharpe was about twenty-five feet away at the time.

34. Roth did not confiscate or keep the pruning shears that Elizabeth Sharpe was using to prune the base of the tree.

35. No written warning was ever given to David Beckford, Leroy Blake, Lenroy Sharpe or Albert Sharpe relating to any woman or women raking brush, pulling brush, pruning trees or pruning any parts of trees in blocks 9-N or 9-K during December 1987, or thereafter.

36. On or about January 15, 1988, Roth told Albert Sharpe that if Albert Sharpe again brought any of the women back to the farm Roth would be forced to terminate Albert Sharpe's employment agreement.

37. After January 15, 1988, when Roth spoke to Albert Sharpe, neither Elizabeth Sharpe nor Cynthia Sharpe ever raked brush or pruned trees at defendants' farm.

38. Cynthia Sharpe and Elizabeth Sharpe were aware that defendants paid wages to David Beckford, Leroy Blake, Lenroy Sharpe, and Albert Sharpe by check.

39. Cynthia Sharpe and Elizabeth Sharpe were aware that David Beckford, Leroy Blake, Lenroy Sharpe, and Albert Sharpe each had entered into written employment agreements with the defendants.

40. Cynthia Sharpe and Elizabeth Sharpe were aware that David Beckford, Leroy Blake, Lenroy Sharpe and Albert Sharpe each received a weekly wage statement with his pay check.

41. Cynthia Sharpe and Elizabeth Sharpe were aware that David Beckford, Leroy Blake, Lenroy Sharpe and Albert Sharpe each received with his pay check counterparts of his punched daily time and work-unit tickets for the pay period.

42. At no time during the period that Cynthia Sharpe and Elizabeth Sharpe claim to have been employed by defendants did either of them ever ask any of the defendants for a paycheck, a written employment agreement, a wage statement, or a time and work-unit ticket.

43. There are fifteen trees which were pruned during December 1987 or January 1988 in rows 43 or 44 in block 9-N for which defendants did not pay wages to any person.

44. Allen Campbell is the man identified as having pruned the fifteen trees and Mable Wright as the person who raked the clippings.

45. Allen Campbell demanded pay for his work which Roth refused.

46. Defendants have no knowledge as to whether or not David Beckford informed Allen Campbell or Mable Wright that work was available with defendants pruning trees and raking brush in block 9-N during the third week of December 1987.

47. Neither David Campbell nor Mable Wright had previously met or spoken to Roth.

48. During the workweek ended December 23, 1987, Albert Sharpe pruned 120 trees but, owing to a clerical error, was paid for only 98 trees.

49. On December 23, 1987, Albert Sharpe complained to Roth that Albert Sharpe had actually pruned more than 98 trees during the week ended December 23, 1987.

50. On December 23, 1987, upon hearing Albert Sharpe's complaint as aforesaid, Roth offered immediately to recount Albert Sharpe's trees with Albert Sharpe's participation.

51. The 22 trees in question were in rows 21-22 of orchard block 9-N; the remaining 98 of the 120 trees were in rows 39-40 of that same block. Defendants do not know the precise date on which each of the 120 trees was pruned by Albert Sharpe.

52. Albert Sharpe's time tickets and wage statement for the five days in question did not reflect the 22 trees in rows 21-22 that are represented by the field note entry omitted from the combination calculation.

53. Albert Sharpe questioned his pay and tree-count for the aforesaid five days on December 23, 1987 in the presence of Mr. Roth and other plaintiffs, and on December 31, 1987 in the presence of Mr. Roth.

54. Albert Sharpe was adamant and sincere in his notification to Roth on December 23, 1987 about the failure to pay for the twenty-two trees. It was the most unusual complaint defendant Roth ever heard about underpayment.

55. On December 31, 1987 a check was prepared and given to Albert Sharpe covering the 22 trees for which he had not been paid on December 23, 1987.

56. As to all other dates except December 1, 1987, December 7, 1987 or February 10, 1988 on which any of the plaintiffs may have performed labor through February 10, 1988, Mr. Roth does not presently recall which of the plaintiffs, if any, he directly observed to arrive at or to leave the worksite on any particular day.

57. Defendants did not make or maintain a contemporaneous daily record reflecting whether or not any meal period was in fact taken by plaintiffs.

58. On numerous occasions Mr. Roth discovered one or more of the plaintiffs to be at work even though he did not directly observe some or all of them to arrive.

59. The reporting practices of David Beckford, Leroy Blake, Lenroy Sharpe and Albert Sharpe were not consistent and Mr. Roth does not presently recall on which days any particular one of them so reported or failed to report his arrival or departure.

60. The "Contracts of Employment and Disclosure" presented to plaintiffs in early December 1987 nowhere state that workers are to report to defendant Roth personally at the time of arrival for work and at the time of departure after work.

61. Mrs. Roth occasionally observed one or more automobiles containing one or more of the plaintiffs to arrive or depart the farm and sometimes observed that one or more of the plaintiffs were present in the orchards. Mrs. Roth does not presently recall on which days, she directly observed any particular plaintiff to arrive at or depart from the worksite.

62. Except for the starting times of David Beckford and Leroy Blake on December 1, 1987, and the starting times of David Beckford, Leroy Blake, Lenroy Sharpe and Albert Sharpe on December 7, 1987, Mr. Roth does not presently recall which daily time tickets or days before February 10, 1988 reflect individual starting times based on Mr. Roth's direct observation, which reflect starting times based on an individual's reporting to Mr. Roth upon arrival at work, and which reflect starting times based upon the worker's claims made to Mr. Roth upon inquiry.

63. Mr. Roth does not presently recall which daily time tickets for days before February 10, 1988 reflect individual stopping times based upon Mr. Roth's direct observation, which reflect individual stopping times based upon an individual's reporting to Mr. Roth upon leaving the worksite, and which reflect stopping times based upon the workers' claims made to Mr. Roth upon inquiry.

64. Beginning on or about February 10, 1988, employees were instructed to record their own starting and stopping times by inserting their daily time tickets in a mechanical time-clock installed on or about that date.

65. Productivity is recorded by punching the daily time ticket in a column that shows the number of work units accomplished.

66. In the case of tree pruning, work units are determined by a physical count of the trees pruned and raked by each employee. The counts are conducted by Mr. Roth using a mechanical tallying device.

67. Mr. Roth developed a system designed to assure accurate counts for each pay period but incapable of

fixing with absolute precision the number of trees pruned by a particular pruner on any particular day when a daily count was not made. That system applied through the balance of work in block 9-N and was used as a reconciliation and proof system in block 9-K.

68. While that system was used in block 9-N, daily counts were made when practicable and recorded on note paper later discarded after the transfer of data to permanent records.

69. In block 9-N Roth usually tied flags onto trees when workers completed or began a row.

70. During some pay periods in block 9-N Roth believed that he had no way to make daily records of trees pruned, and used his "Amsoil" pad to make an approximation of the daily totals of trees pruned.

71. During some weeks where plaintiffs pruned in block 9-N Roth had weekly totals of trees that he allocated to the days for which he did not know the daily total of trees pruned according to the weekly total.

72. At times, Roth would allocate estimated daily totals of trees pruned based upon his recorded number of hours worked on those days and based on the best available data he had in his "Amsoil" or other note pad.

73. When Roth recorded an actual daily tree total pruned by a worker, Roth either punched it on the field ticket or wrote it in his "Amsoil" or other note pad by listing workers along the left hand column and days across the top.

74. Except for two occasions, no worker complained their weekly tree counts were erroneous.

75. Block 9-K has twenty-five rows.

76. There is no physical barrier between rows 1 through 18 of block 9-K and rows 19 through 25 of block 9-K.

77. Roth did not put in writing the different rates for pruning rows 1-18 and rows 19-25 in block 9-K and did not adequately verbally differentiate between those sets of rows.

Discussion

A. *Category of Workers*

The first issue which this court must decide is whether the plaintiffs fall within the category of protected persons covered by the statutes in question. Section 1802(8)(A) of the AWPA defines a migrant agricultural worker as "an individual who is employed in agricultural employment of a seasonal or other temporary nature, and who *is required* to be absent overnight from his permanent place of residence." A seasonal worker is defined as "an individual who is employed in agriculture employment of a seasonal or other temporary nature and *is not required* to be absent overnight from his permanent place of residence." 29 U.S.C.S. §1802(10)(A) (Law. Co-op. Supp. 1989).

At the time of their employment, Blake and the Sharpes gave their local addresses. Periodically, families would appear at the farm. Elizabeth Sharpe owned and operated a car which appeared frequently at the farm. There is no evidence the vehicle had an out-of-state license plate that would put defendants on notice that the local address was not plaintiffs' permanent address. Roth made no specific inquiry regarding permanent addresses. The statutes in question are protective in nature. In order to comply with the provisions of AWPA, a farm operator needs to know whether his workers are seasonal or migrant.[1] A reasonably prudent person, therefore, should have made further inquiry as to whether the address given was temporary or permanent.

The testimony presented at trial establishes that Blake and the Sharpes worked at other orchards prior to coming to Pennsylvania and that they had a permanent home in Winter Haven, Florida. This evidence supports a finding that these plaintiffs are migrant workers. David

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1. 29 C.F.R. §500.80 (1988) requires agricultural contractors who employ migrant or seasonal workers to keep records which include the permanent address of each worker.

Beckford, however, has a permanent residence in Mercersburg, Pennsylvania and qualifies as a seasonal worker.

B. *Employee Status of Elizabeth Sharpe, Cynthia Sharpe, Mable Wright, Allen Campbell and David Beckford*

The FSLA generally defines an employee as "any individual employed by an employer." 29 U.S.C.S. §203(e)(1) (Law. Co-op. Supp. 1989). The FLSA defines "employ" as "includes to suffer or permit to work." 29 U.S.C.S. §203(g) (Law. Co-op. 1975). This is also the standard under the AWPA. *See* 29 U.S.C.S. §1802(5) (Law. Co-op. Supp. 1989). Roth had actual knowledge of the presence and work being performed by Elizabeth and Cynthia Sharpe and suffered and permitted them to be employed. On various occasions Roth observed Elizabeth and Cynthia Sharpe raking brush in the orchard in the company of their husbands. Elizabeth Sharpe worked from December 8, 1987 through December 23, 1987. Cynthia Sharpe worked from December 8, 1987 through January 15, 1988.

On the other hand, Roth had no knowledge of whether Wright and Campbell worked on the farm. He neither met with nor spoke to either of them prior to December 23, 1987. Nor did Roth know whether David Beckford informed them that work was available at the defendants' farm. Wright and Campbell are not employees of Roth. Furthermore, this court does not find David Beckford to have been a recruiter of workers for Roth. There is no evidence that Roth authorized anyone, including Beckford, to hire anyone or put them to work without first reporting to Roth.

C. *Computation of Minimum Wage*

The AWPA requires defendants to maintain accurate payroll records including information as to hours worked by each employee and the number of piece work units credited as pay. The AWPA further requires that

defendants provide accurate pay statements to each employee. 29 U.S.C.S. §1821(d)(2) (Law. Co-op. Supp. 1989). This information is similarly required by the PSFLA. 43 Pa. Cons. Stat. §1301.205 (Purdon Supp. 1989). Accurate information as to starting and stopping times is further required to be recorded on payroll records pursuant to regulations under the FLSA, 29 U.S.C.S. §211(c) (Law. Co-op. Supp. 1989), and 29 C.F.R. §§516.2(a) (7) and 516.6(a)(1) (1988).

Plaintiffs dispute the accuracy of payroll records and wage statements for the defendants as to hours worked for the period prior to February 18, 1988. Prior to February 10, 1988 defendants admit they had no daily routine for recording stopping and starting times from employees. Instead, defendants occasionally would record incidental observations as to starting or stopping times made, but claim that they generally relied upon employees to inform them of starting and stopping times when the employees were asked. On February 10, 1988, defendants began to employ a time clock system for recording starting and stopping times.

From December l, 1987 through February 17, 1988 defendants engaged in a practice of charging plaintiffs for a lunch break of one-half hour on every day when plaintiffs were credited by defendants with having worked 4 or more hours in the day. This practice continued for one week after the institution of the time clock even though the time clock records showed no lunch deduction. Prior to the usage of the time clock in February 1988 defendants also deducted one-half hour on eight occasions when plaintiffs were credited by defendant with having worked fewer than four hours on those days. As a result of these two payroll practices, plaintiffs estimate that the payroll records of the four plaintiffs for which defendants maintained records during the period December 1, 1987 to February 17, 1988 understate their actual hours worked by approximately 145 hours.

Plaintiffs' expert opined that instead of starting at 9:00 a.m. as shown by defendants' records, the plaintiffs started at 8:00 a.m. He based his opinion on the fact that once the time clock was used earlier starting times began to appear. However, Dr. Cuppingood's theory does not appear appropriate. For instance, David Beckford showed starting times of 9:30 twice and 12:00 noon once since the time clock was installed. Thus in the pay period ending January 29, 1988, allowing for a starting time of 9:00 a.m. with no deduction for lunch, he would only be due $20.10 not $23.45. Therefore, the court finds Beckford is due no wage loss.

Leroy Blake showed starting times of 8:30 a.m on the on the time clock records. Thus for the pay period ending January 29, 1988, using a starting time of 8:30 a.m. and not deducting a lunch break, he would have worked 6.5 hours for a total of $21.78 for a balance due of $3.35. For the week ending January 8, 1988, assuming a starting time of 8:30 a.m. and no deduction for a lunch break, Blake would have worked 12 hours for a total of $40.20 for a balance due of $2.70 or a total due of $6.05. Roth has tendered $3.35.

Lenroy Sharpe likewise showed an 8:30 starting time on the time clock records. For the week ending January 8, 1988, assuming an 8:30 starting time and no lunch break, he would have worked 12 hours for a total of $40.20. He was paid $40.50; there is no balance due for that week. For the week ending January 15, 1988, assuming the same conditions as above, he would have worked 29.5 hours for a total of $98.83. He was paid $106.50; therefore, no balance is due.

Albert Sharpe has no time clock records. Since the Sharpes all traveled together the court can assume an 8:30 starting time. For the week ending January 29, 1988, Albert Sharpe would have worked 6.5 hours for a total of $21.78. He was paid $18.43; the balance due is $3.45. Roth has tendered $3.35.

Elizabeth Sharpe and Cynthia Sharpe traveled with their husbands. It is a proper assumption that their

beginning and ending times are the same as their husbands. Thus, Cynthia Sharpe would have worked 90.5 hours for a total of $303.18. Elizabeth Sharpe would have worked 60.5 hours for a total of $202.68.

D. *Failure to Preserve and Maintain Proper Payroll Records in Conformity with FLSA*

The FLSA record keeping regulations at 29 C.F.R. §516.6 prescribe those supplementary basic records which an employer is required to preserve for a period of at least two (2) years. Title 29 C.F.R. §516.6(a) provides in pertinent part:

> (1) *Basic employment and earning records.* From the date of last entry, all basic time and earning cards or sheets on which are entered the daily starting and stopping time of individual employees, or of separate work forces, or the amounts of work accomplished on a daily, weekly, or pay period basis (for example, units produced) when those amounts determine in whole or in part the pay period earnings or wages of those employees.
>
> (2) *Wage rate schedules.* From their last effective date, all schedules or tables of the employer which provide the piece rate or other rates used in computing straight-time earnings, wages or salary, or overtime pay computation.

This court believes defendant Roth substantially complied with these regulations except with regard to Elizabeth and Cynthia Sharpe and except for the meal breaks. Defendant Roth did not make or maintain a contemporaneous daily record reflecting whether or not any meal period was, in fact, taken by plaintiffs, and defendant Roth has no actual knowledge that such breaks were taken. Defendants argue, however, that the contract of employment contains the following provision: "10. For every five (5) hours of continuous work, Employer will designate and Employee will receive an

unpaid thirty minute (30) meal or rest period." There is no indication that any break period was ever designated and the testimony indicates the plaintiffs, if they did eat, took only very short breaks and continued to work. The time they worked is compensable. *Usery v. Kinder Grun Haus, Inc.*, 22 Wage and Hour Cas. (BNA) 1269, 1271 (E.D. Ky. 1976).

E. *Retaliatory Actions*

Plaintiffs allege that certain disputes over tree counts, warnings over work violations and piece work rates were purposefully instigated for retaliatory reasons. They do not indicate the bases for the alleged retaliation. One could infer that the retaliation was because plaintiffs complained about defendants to Friends of Farmworkers on January 28, 1988. But the only incident which occurred after that date was the dispute as to where the $2.00 piece work was located. There was a genuine dispute over this issue and one must take a giant leap to conclude defendant manufactured these disputes as retaliatory acts. Further, the FLSA provides that "[i]t shall be unlawful for any person—to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter. . . ." 29 U.S.C.S. §215(a)(3) (Law. Co-op. 1975). The 1977 amendments to the FLSA created a private right of action for employees who are retaliated against in violation of FLSA section 15(a)(3). *See* 29 U.S.C.S. §216(b) (Law. Co-op. 1975 & Supp. 1989).

There is no evidence that at the time disputes about work at defendants' farm were occurring—December 23, 1987 through April 13, 1988—a complaint or action had been instituted against Roth. Arguably, threats of filing the law suit had been made during this period. However, plaintiffs have not convinced this court by a preponderance of the evidence that Roth's actions were retaliatory.

F. *Violations of AWPA*

1. *Recruiting Patterns/Disclosure of Information*

Terms and conditions of employment are to be provided to all agricultural workers at the time of their recruitment for employment. 29 U.S.C.S. §1821(a) (Law. Co-op. Supp. 1989) and 43 Pa. Cons. Stat. §1301.505(l) (Purdon Supp. 1989). There is no dispute that defendant Roth did distribute a two page document entitled "Contract of Employment and Disclosure" to Beckford, Blake and the two Sharpe men. There is dispute as to when it was distributed. Even if it was distributed towards the end of the first day of work, the confusion or misunderstanding as to when the men were going to work relieves Roth from any wrongdoing with regard to these plaintiffs on this issue. There is no question that Elizabeth and Cynthia Sharpe had no employment contract.

This court also finds that the location of the $2.00 trees was not adequately disclosed to plaintiffs. Roth's own testimony established that he merely gestured toward a section of trees. By doing so without a detailed explanation, Roth caused confusion as to this aspect of the terms of employment.

2. *Wage Timeliness*

As noted previously, Elizabeth and Cynthia Sharpe were not timely paid. There is some evidence that Albert Sharpe was not timely paid piece rates (December 23, 1987 and January 6, 1988), and Leroy Blake was not timely paid piece rate wages (January 6, 1988). There is some evidence that the December 23, 1987 incident could have been corrected but Albert Sharpe was anxious to leave for Florida on the day in question. There is also evidence of record that imprecision of daily tree counts was caused in part by the employees' disregard of defendants' instructions as to where to work and how to progress with their work. The damages awarded for these violations reflect these facts.

3. *Maintaining Payroll Records*

The AWPA requires agricultural employers to make, keep and preserve payroll records. 29 U.S.C.S. §§1821(d)(1) and 1831(c)(1) (Law. Co-op. Supp. 1989). Defendant Roth did keep such records. The accuracy and detail of those records may be wanting, but Roth sufficiently complied with these provisions of the statute except as to Elizabeth and Cynthia Sharpe. He also supplied statements to plaintiffs (except as to Elizabeth and Cynthia Sharpe) reflecting those payroll records in compliance with 29 U.S.C.S. §§1821(d)(2) and 1831(c)(2). The notations on his note pad of the piece work and the punch cards given as payroll receipts comply with the statute. To the extent that those wage statements did not reflect accurate starting times or deducted lunch breaks erroneously, defendants are not in compliance with 29 U.S.C.S. §§1821(f) and 1831(e).

Conclusions of Law

1. Each plaintiff, except Mable Wright and Allen Campbell, was an employee for purposes of the Fair Labor Standards Act. 29 U.S.C.S. §203(g) (Law. Co-op. 1975); 29 C.F.R. §500.20(h) (1988); 29 C.F.R. §779.19 (1988).

2. Defendants owe plaintiffs unpaid minimum wages. 29 U.S.C.S. §§201, 219 (Law. Co-op. 1975 & Supp. 1989).

3. Defendants owe plaintiffs liquidated damages in an equal amount to unpaid minimum wages.

4. Plaintiffs Elizabeth Sharpe, Lenroy Sharpe, Cynthia Sharpe, Albert Sharpe and Leroy Blake are each migrant agricultural workers or were migrant agricultural workers at the time they worked for defendants for purposes of the Migrant and Seasonal Agricultural Worker Protection Act. 29 U.S.C.S. §1802(8)(A) (Law. Co-op. Supp. 1989).

5. Defendants violated the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C.S.

§1821(a), as to plaintiffs Elizabeth Sharpe and Cynthia Sharpe.

6. Defendants violated the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C.S. §1821(f), as to plaintiffs Lenroy Sharpe, Leroy Blake, Albert Sharpe and as to David Beckford under 29 U.S.C.S. §1831(e) with respect to the $2.00 piece rate issue and false time records.

7. Defendants failed to provide any wage receipts to plaintiffs Elizabeth Sharpe and Cynthia Sharpe in violation of 29 U.S.C.S. §1821(d)(2) (Law. Co-op. 1982 & Supp. 1989) and 29 C.F.R. §500.80 (1988).

8. Defendants provided false, misleading and otherwise improper wage receipts to plaintiffs Lenroy Sharpe, Albert Sharpe and David Beckford in violation of 29 U.S.C.S. §§1821(f), 1831(e), 1821(d)(2) and 1831(c)(2); and 29 C.F.R. §§500.77 and 500.80.

9. Defendants violated 29 U.S.C.S. §1822(a) as to Elizabeth, Cynthia and Albert Sharpe.

Damages

In determining the amount of statutory damages, plaintiffs ask this court to consider (1) defendants unreasonably refused to resolve the matters in dispute without resort to litigation; and (2) prior determinations by the United States Department of Labor that defendants in 1984 engaged in bookkeeping violations as to hours worked. Roth was first contacted by Friends of Farmworkers on January 28, 1988. By letter dated February 16, 1988, this organization had already prepared a complaint and forwarded a copy to defendants' counsel. The court notes that this kind of tactic is not conducive to negotiations. Furthermore, a review of the correspondence shows clear areas of factual dispute. Efforts were made to settle this matter even through personal meetings. In light of this court's disposition of the other issues, the court finds defendants had some legitimate bases for not giving into all of plaintiffs' demands.

With regard to alleged notice on the part of defendants as to their employer obligations, the court has reviewed plaintiffs' Exhibit 10.23.03 – the Department of Labor narrative report of 1984 re: Apple Valley Farms. Most of the problems investigated in 1984 are not applicable to the case *sub judice.* Only two apply. One was defendant Roth's failure to give an adequate pay stub. The pay stub provided in the instant case had far more information than those involved in the 1984 investigation. The other issue under investigation was defendant Roth's estimating hours worked instead of accurately recording hours. This factor will be considered in assessing damages.

Fair Labor Standards Act Damages

Employee Name	FSLA Unpaid Wages	FLSA Liquidated Damages	Total Amount	Amount Tendered	Balance Due
Albert Sharpe	3.45	3.45	6.90	3.35	3.55
Leroy Blake	6.05	6.05	12.10	3.35	8.75
Elizabeth Sharpe	202.68	202.68	405.36	-0-	405.36
Cynthia Sharpe	303.18	303.18	606.36	-0-	606.36

Migrant and Seasonal Agricultural Worker Protection Act Damages

Employee Name	Violation Citation	Award	Total
Elizabeth Sharpe	29 U.S.C.S. §1821(d)(2)	100.00	
Elizabeth Sharpe	29 U.S.C.S. §1821(a)	100.00	
Elizabeth Sharpe	29 U.S.C.S. §1822(a)	50.00	
Elizabeth Sharpe	29 U.S.C.S. §1821(d)(1)	50.00	
Elizabeth Sharpe AWPA Damages			$300.00
Cynthia Sharpe	29 U.S.C.S. §1821(d)(2)	100.00	
Cynthia Sharpe	29 U.S.C.S. §1821(a)	100.00	
Cynthia Sharpe	29 U.S.C.S. §1822(a)	50.00	
Cynthia Sharpe	29 U.S.C.S. §1821(d)(1)	50.00	
Cynthia Sharpe AWPA Damages			$300.00
Lenroy Sharpe AWPA Damages	29 U.S.C.S. §1821(f) ($2.00 tree issue and false time records)	125.00	$125.00
Albert Sharpe	29 U.S.C.S. §1822(a) (late payment at $25 x 2)	50.00	

Employee Name	Violation Citation	Award	Total
Albert Sharpe	29 U.S.C.S. §1821(f) (false time records)	25.00	
Albert Sharpe AWPA Damages			$ 75.00
Leroy Blake	29 U.S.C.S. §1821(f) ($2.00 tree issue)	100.00	
Leroy Blake	29 U.S.C.S- §1821(f) (false time records)	25.00	
Leroy Blake AWPA Damages			$125.00
David Beckford AWPA Damages.	29 U.S.C.S. §1831(e) ($2.00 tree issue and false time records)		$125.00

An appropriate judgment order will be issued.

Sylvia H. Rambo
United States District Judge

Dated: November 21, 1989

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ELIZABETH SHARPE, CYNTHIA SHARPE, LENROY SHARPE, ALBERT SHARPE, DAVID BECKFORD, LEROY BLAKE, ALLEN CAMPBELL, and MABLE WRIGHT,	:	CIVIL ACTION
Plaintiffs	:	No. 88-0814
v.	:	
PHILIP A. ROTH, APPLE VALLEY FARMS, INC., and P.A.R. ORCHARDS,	:	FILED Harrisburg, Pa. Nov. 21, 1989 Donald R. Berry, Clerk
Defendants	:	PER Deputy Clerk

JUDGMENT ORDER

In accordance with the accompanying memorandum, IT IS ORDERED AND ADJUDGED THAT:

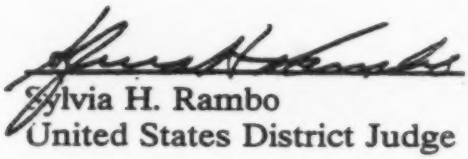
1) Judgment be and is hereby entered in favor of defendants as to the claims of plaintiffs Allen Campbell and Mable Wright;

2) Judgment be and is hereby entered against defendants and in favor of plaintiffs Elizabeth Sharpe, Cynthia Sharpe, Albert Sharpe, Leroy Blake, Lenroy Sharpe and David Beckford in the following amounts:

Elizabeth Sharpe	$705.36
Cynthia Sharpe	$906.36
Albert Sharpe	$ 78.55
Leroy Blake	$133.75
Lenroy Sharpe	$125.00
David Beckford	$125.00

3) Plaintiffs shall file affidavits and documentation in support of their request for attorneys' fees no later than December 11, 1989; and

4) Defendants may file a response to plaintiffs' filing on the fee issue no later than December 22, 1989.



Sylvia H. Rambo
United States District Judge

Dated: November 21, 1989